IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 34835 of 2007(V)

PETITIONER:

V.C.ALIKUNHI HAJI & SONS,
P.O.ELATHOOR, KOZHIKODE.

BY ADV. SRI.C.A.SADASIVAN
SRI.S.ABU BAKER KUNJU
SRI.P.BALAKRISHNAN
SRI.A.RAJAPPAN (VAIKAM)

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY(TAXES), THIRUVANANTHAPURAM.

2. DEPUTY COMMISSIONER,
COMMERCIAL TAX DEPARTMENT,
KOZHIKODE.

3. ASST. COMMISSIONER,
SPECIAL CIRCLE-1, COMMERCIAL TAXES,
KOZHIKODE.

4. KERALA SALES TAX APPELLATE TRIBUNAL,
ADDITION BENCH, KOZHIKODE.

BY GOVT.PLEADER SRI GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

W.P.(C) 34835 OF 2007

Dated: December 3, 2007

JUDGMENT

The prayers sought for in this writ petition are for declaring that sec.17D of the KGST Act to be unconstitutional and to set aside Exts.P4, P5 and P6 as illegal since the same are against Ext.P3. It is also the prayer that the Appellate Tribunal should be directed to admit the appeals without remitting any amount as required under sec.17D (5).

2. In so far as this case is concerned, Exts.P4, P5 and P6 are the three assessment orders issued for the years 2001-02, 2003-04 and 2004-05. By Ext.P11 circular dated 12.4.2007, all assessments under the KGST Act pending as on 1.4.2007 were ordered to be completed under the fast track method as envisaged in sec.17D of the KGST Act. It is on that basis the assessments in question were contemplated under sec.17D.

3. Sec.17D provides that notwithstanding anything contained in any other law for the time being in force or in any other provisions of the KGST Act, assessments pending under the Act as on the 1st day of April, 2007 be completed under the Fast Track Method. Thus, the section begins with a non obstante clause. Therefore, even if the assessment years in question are prior to the introduction of sec.17D, the fact that Sec.17D was introduced only with effect from 1.4.2007 does not stand in the way of the authorities under the Act including those assessment years also under Sec.17D of the Act.

4. The complaint of the petitioner appears to be that sec.17D(5) provides that no appeal under sec.17D shall lie to the Sales Tax Appellate Tribunal except in a case

where a dealer has paid the entire tax amount. This, according to the counsel, affects the right of appeal itself and therefore is unconstitutional. I am not in a position to accept this contention. As I have already held, sec.17D does not stand in the way of the authorities under the Act for including those assessment years also under sec.17D even if it is before 1.4.2007 when the section was introduced. The right of appeal is a statutory right and therefore if a condition is imposed in the statute itself for availing of the statutory right of appeal, there is nothing illegal in that. Even absence of a provision for appeal by itself will not invalidate the statute. If that be so, the condition requiring remittance of tax for entertaining the appeal, cannot be held to be invalid for any reason. The petitioner has filed Exts.P8,P9 and P10 along with Appeals against Exts.P4, P5 and P6 assessment Orders. These appeals are now pending before the 4th respondent. Obviously in terms of Sec.17D(5) as the petitioner has not remitted the tax that is found to be due in terms of the orders of assessment, these appeals are not admitted. This also cannot be said to be in any manner irregular as there is an admitted non compliance of Sec.17D(5).

5. The petitioner submits that amounts are due to be refundable for the years 1996-97, 1997-98 and 1998-99 and seeks adjustment of these amounts towards his liability under Exts.P8, P9 and P10. The learned Government Pleader on instructions submits that these are matters which are also pending before the Tribunal. If that be so, the request for adjustment cannot be granted.

In the result the writ petition fails and it is dismissed.

ANTONY DOMINIC, JUDGE

mt/-